Case 1:16-cr-00640-BMC Document 742 Filed 06/10/19 Page 1 of 2 PageID #: 10203



U.S. Department of Justice

United States Attorney Eastern District of New York

ALC/DCP/LHE/PTH F. #2016R00505

271 Cadman Plaza East Brooklyn, New York 11201

June 10, 2019

BY ECF

The Honorable Brian M. Cogan United States District Judge Eastern District of New York 225 Cadman Plaza East Brooklyn, New York 11201

Re: United States v. Mark Nordlicht, et al.

Criminal Docket No. 16-640 (BMC)

Dear Judge Cogan:

The government respectfully submits this letter to move for an order requiring defendant Mark Nordlicht to disclose the order of the defense witnesses who have been noticed to date, and for an order requiring the defendants to call Special Agent Julie Amato between 9:30 a.m. and 12:30 p.m. on Tuesday, June 11, 2019, if they choose to call her that day.

As the Court is aware, the government expects to rest early tomorrow morning, following the admission of the remaining exhibits it intends to introduce. The government has provided the defendants with its list of remaining exhibits and the defendants have indicated they have objections to certain of those exhibits. As soon as the Court has addressed any such objections and the government's final exhibits are received, the defense will start its case, presumably by mid-morning tomorrow.

On the evening of Friday, June 7, 2019, defendant Nordlicht advised the government of the first seven witnesses he intends to call as part of his defense case. Despite at least two requests from the government by e-mail, the defendant has not provided the government with the anticipated order of those witnesses, as the government was required to do during its case. It is unreasonable to expect the government to prepare for seven defense witnesses at once, particularly since the defendant has not provided any Rule 26.2 material, and the government reserves the right to delay cross-examination until it is adequately prepared. Accordingly, the government respectfully requests that defendant Nordlicht be ordered to provide the order of witnesses in his defense case no later than 4:00 p.m. today.

The seven witnesses noticed by Nordlicht did <u>not</u> include the government's case agents, Special Agent Julie Amato and Postal Inspector Amber Jordan. Nevertheless, Nordlicht indicated on Sunday, June 9, that he now intends to call both Special Agent Amato and Inspector Jordan on Tuesday. As a result, Nordlicht has now noticed nine witnesses, and has not provided the proposed order for any of them. Moreover, defendant Levy indicated in court on Friday that,

in the event Nordlicht could not fill the day on Tuesday with testimony, he would call Special Agent Amato and Inspector Jordan that day. In order to streamline the process for the defense case, the government agreed to waive the <u>Touhy</u> subpoena process for Special Agent Amato and Inspector Jordan, and said it would make them available for testimony. However, defense counsel never notified the government of the timing prior to informing the Court, which has resulted in a scheduling conflict that defense counsel has not attempted to accommodate. Both Special Agent Amato and Inspector Jordan had important work commitments scheduled for Tuesday and had not planned to be in court that day. In order to attempt to reach a solution, the government has confirmed that Special Agent Amato will be available between 9:30 a.m. and 12:30 p.m. on Tuesday and Inspector Jordan was able to reschedule her work commitment and be in court on Tuesday. Accordingly, the government respectfully requests that the Court require the defendants to call Special Agent Amato between 9:30 a.m. and 12:30 p.m. This is a very reasonable compromise that does not prejudice the defense case in any way.

Respectfully submitted,

RICHARD P. DONOGHUE United States Attorney

By: /s/

Alicyn L. Cooley
David C. Pitluck
Lauren H. Elbert
Patrick T. Hein

Assistant U.S. Attorneys

Cc: Clerk of the Court (BMC) (by ECF)
Defense Counsel (by ECF)